

## Case T-260/03

**Celltech R & D Ltd**

**v**

**Office for Harmonisation in the Internal Market  
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Word mark CELLTECH — Absolute grounds for refusal  
— Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 14 April 2005 . . . II - 1217

### Summary of the Judgment

- 1. Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Descriptive character and lack of distinctive character of a sign — Relationships between relevant provisions  
(Council Regulation No 40/94, Art. 7(1)(b) and (c))*
- 2. Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Marks composed exclusively of signs or indications which may serve to designate the characteristics of goods — Word sign CELLTECH  
(Council Regulation No 40/94, Art. 7(1)(b) and (c))*

1. A word mark which is descriptive of characteristics of goods or services for the purposes of Article 7(1)(c) of Regulation No 40/94 on the Community trade mark is, on that account, necessarily devoid of any distinctive character with regard to the same goods or services for the purposes of Article 7(1)(b) of the regulation

In order to establish that a trade mark which is not prevented from registration on account of the ground of refusal laid down in Article 7(1)(c) of the regulation is none the less devoid of any distinctive character within the meaning of Article 7(1)(b) thereof, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) must set out the reasons why it considers that that trade mark is devoid of distinctive character.

(see paras 23-24)

2. The word sign CELLTECH, for which registration as a Community trade mark is sought in respect of 'pharmaceutical, veterinary and sanitary preparations,

compounds and substances', 'Surgical, medical, dental and veterinary apparatus and instruments' and 'Research and development services; consultancy services; all relating to the biological, medical and chemical sciences' in Classes 5, 10 and 42 of the Nice Agreement, respectively, is not devoid of any distinctive character within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, in the view of the average English-speaking consumer and of the specialists as a whole from the medical field regardless of their mother tongue, since, firstly, it has not been established that the trade mark claimed was prevented from registration on account of the ground for refusal set out in Article 7(1)(c) of Regulation No 40/94, in that it is descriptive of the goods and services in respect of which registration was sought, and, secondly, no other grounds were set out as to why that mark was none the less devoid of any distinctive character for the purposes of Article 7(1)(b) in so far as, taken as a whole, it would not allow the public targeted to distinguish the goods and services in question from those having a different commercial origin.

(see paras 31, 41, 44-45)